THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No.7171 of 2006

Dated:20.12.2006

Between:

V. Venkataiah.

.....PETITIONER

AND

The Divisional Manager, APSRTC, Nalgonda Division, at Nalgonda, Nalgonda District and others.

....RESPONDENTS

THE HONOURABLE SRI JUSTICE N.V.RAMANA

W.P.No.7171 of 2006

ORDER:

The petitioner while working as Conductor in the respondents-Corporation was issued charge sheet-cum-suspension order on the ground that he deserted duty of Peddamunigal night out service on 18.09.2000 and failed to make night halt at Peddamunigal. The petitioner submitted his explanation denying the charges. Dissatisfied with the explanation, an enquiry was conducted. The Enquiry Officer, who conducted an enquiry into the charges, held the charges proved. Based on the enquiry report, the 2nd respondent removed the petitioner from service vide proceedings dated 13.09.2001. Aggrieved by the same, the petitioner preferred an appeal, and the appellate authority, vide proceedings dated 09.04.2002, ordered reinstatement of the petitioner into service as Grade-II Conductor afresh, with minimum basic pay. Though the petitioner was reinstated into service afresh as Grade-II Conductor, yet the petitioner raised an industrial dispute in I.D. No.36 of 2004 assailing the removal order dated 13.09.2001. However, the Tribunal, relying upon the judgment of a Division Bench of this Court in W.A. No.345 of 2004, dated 01.03.2004, dismissed the same as not maintainable under Section 2A(2) of the Industrial Disputes Act, 1947 (for short 'the Act'). Aggrieved by the same, the petitioner filed this writ petition.

2. The learned counsel for the petitioner submitted that the Labour Court committed an error in dismissing the I.D. without deciding whether the respondents-APSRTC was justified in removing him service based on the report of the enquiry officer, which held that the charges leveled against him are proved. He submitted that the petitioner by virtue of the order of the appellate authority, though was reinstated into service, but since the appellate authority, has not passed any orders setting aside the initial order of removal dated 13.09.2001, passed by the disciplinary authority, he raised an industrial dispute, and the

Labour Court committed an error in holding that the petition is not maintainable under
Section 2-A(2) of the Act. He submitted that since any dispute or difference between the workman and his employer on the orders passed in appeal or review, arising out of dismissal or termination, though modified, shall be deemed to be an industrial dispute, the industrial dispute raised by the petitioner under Section2-A(2) of the Act, is maintainable. He thus, prayed to direct the respondent-APSRTC to reinstate the petitioner into service with continuity of service, full back wages and all other benefits, by setting aside the removal order dated 13.09.2001 of the 2nd respondent and the order dated 09.04.2002 of the 1st respondent.

3. On the other hand, the learned Standing Counsel for the respondent-APSRTC contended that against the order of the appellate authority, which ordered for reinstatement of the petitioner as Grade-II Conductor afresh, an application under Section 2-A(2) of the Act is not maintainable, and the Tribunal has rightly dismissed the I.D. filed by the petitioner. He further contended that the petitioner having accepted the orders of the appellate authority and re-joined into service, cannot be allowed to contend that the order of removal still remains, and as such, the order of the Labour Court, refusing to entertain the I.D., cannot be said to be illegal or arbitrary. In support of his contention, he placed reliance on a judgment of the Division Bench of this Court in ***B. VIDYASAGAR v. DEPOT MANAGER, APSRTC, KARIMNAGAR***[1]***.***

4. Heard the learned counsel for the petitioner and Standing Counsel for respondent-APSRTC and perused the impugned award.

5. Admittedly, the disciplinary authority passed an order of removal. Assailing the said order, the petitioner filed an appeal, and the appellate authority, ordered his reinstatement into service as Grade-II Conductor afresh. In terms of the said order, the respondents-APSRTC reinstated the petitioner into service as Grade-II Conductor, and the petitioner accepting the said order, even joined the service. May be, the appellate authority while

ordering reinstatement of the petitioner into service as Grade-II Conductor afresh, might not have passed an order specifically setting aside the order passed by the disciplinary authority, but that by itself cannot be a ground for the petitioner to assail the order of removal passed by the disciplinary authority, and more so when the petitioner in pursuance of the order of reinstatement ordered by the appellate authority, joined the service of the respondents-APSRTC. A Division Bench of this Court in W.A.No.345 of 2004, held that having accepted the order of reinstatement afresh and rejoined into service, the petitioner cannot now contend that the order of removal still remains, and more so the order of reinstatement remained unchallenged even that date.

6. A perusal of the impugned order would show that as the appellate authority ordered reinstatement of the petitioner into service as Conductor afresh, and the petitioner without challenging the said order, joined into service and is working in the respondent-APSRTC, the Labour Court felt that it had no hesitation to set aside the termination order dated 13.09.2001, and it also felt that there was no necessity for it to give any finding on the charges framed against the petitioner, and holding so, dismissed the I.D. as not maintainable under Section 2A(2) of the Act.

7. Merely because the appellate authority while ordering reinstatement of the petitioner into service as Grade-II Conductor afresh, has not set aside the order of removal, it does not mean that the petitioner is entitled to maintain the I.D. under Section 2-A(2) of the Industrial Disputes Act. In ***B. VIDYASAGAR v. DEPOT MANAGER, APSRTC, KARIMNAGAR*** (1 Supra), a Division Bench of this Court held that where punishment of removal from service passed by the disciplinary authority, is modified to a lesser punishment by the appellate authority or reviewing authority, then the workman cannot invoke the provisions of Section 2-A(2) of the Act and question the lesser punishment. In the instant case, though the appellate authority had not specifically set aside the order of removal passed against the petitioner by the disciplinary authority, the fact remains, it in fact has modified the punishment of removal imposed against the petitioner to that of his

reinstatement into service as Grade-II Conductor afresh. When the appellate authority directed reinstatement of the petitioner into service as Grade-II Conductor afresh, the order passed by the disciplinary authority removing the petitioner from service automatically stood aside. Inasmuch as the order of removal passed by the disciplinary authority against the petitioner was modified to that of a lesser punishment by the appellate authority in appeal, and having regard to the fact that on the day when the petitioner filed the I.D. the order of removal passed against the petitioner was not in existence, no exception can be taken to the award of the Labour Court dismissing the I.D. holding that the petitioner is not entitled to invoke the provisions of Section 2-A(2) of the Act.

8. In the result, the Writ Petition is dismissed. However, the petitioner-workman is at liberty to avail the remedies available to him under law against the order passed by the reviewing authority imposing lesser punishment. No costs.

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N.V. RAMANA, J.

Dated:20.12.2006
sj/ksr

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[1] 2006(4) ALT 280 (D.B)